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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,976	08/20/2001	Jesse Max Dean	60,491-002	4221

27305 7590 08/19/2003

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EXAMINER

ACKUN, JACOB K

ART UNIT

PAPER NUMBER

3712

DATE MAILED: 08/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/931,976

Applicant(s)

DEAN, JESSE MAX

Examiner

Jacob K. Ackun Jr.

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3712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,4,6-10,12-15 and 17-21 is/are pending in the application.
- 4a) Of the above claim(s) 21 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17,19 and 20 is/are allowed.
- 6) ☒ Claim(s) 1,3-4,6-10,12-15 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other:

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1. Newly submitted claim 21 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claim 21 is drawn to a method of use of the product claimed in the remaining claims. The product as claimed can be used in a materially different method of use, such as one not requiring either the positioning, contacting or manipulating steps of claim 21.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 21 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

2. The amendment filed on 06/16/03 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the teaching that the third sheet is affixed permanently; the deletion of portions of the specification indicating that the attachment of the third sheet and a disclosed relationship between the longitudinal edge 34 and the first and second side edges 24 and 26 were not intended to limit the invention.

Applicant is required to cancel the new matter in the reply to this Office Action.

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1, 3-4, 6-10 and 12-15 and 18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject

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matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. These claims recite that the third sheet is permanently affixed. As noted above this is considered to be New Matter.

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1, 10, 12, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Patience. Note all of the comments in the first office action.

7. Claims 3, 4, 6-9, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patience. Note the first office action.

8. Claims 1, 3, 4, 6-10, and 12-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Finch. Note the first office action.

9. Claims 1, 3, 4, 6-10, and 12-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Peppiat et al. The requirement for a third sheet in the claims is met by absorbent insert 28 which is permanently affixed to either a first or second sheet forming the bag. The device of Peppiat is inherently capable of use to remove and collect waste material, as set forth in the claim preambles.

10. Applicant's arguments filed 06/16/03 have been fully considered but they are not persuasive. As noted above the feature on which the applicant now appears to rely, the permanent attachment of the third sheet, is considered to be new matter. In this regard it is noted that applicant's comments in paragraph 2 of the Remarks filed with the last response have been carefully considered. However, the fact that the methods of attachment originally taught were

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indicated only as examples, taken together with the original teaching that any conventional method could be used, does not support the applicants contention that permanent attachment is not new matter. In fact it appears to indicate the opposite. In any event claim 1 would not distinguish over other prior art as indicated in the new rejection over Peppiatt et al.

11. Claims 11 and 19-20 are allowed.

12. Claim 18 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

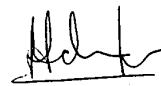
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacob K. Ackun Jr. whose telephone number is (703)308-3867.

The examiner can normally be reached on Monday through Friday 8.30AM-5.00PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (703)308-1745. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3579 for regular communications and (703)305-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.



Jacob K. Ackun Jr.  
Primary Examiner  
Art Unit 3712

J.A.  
August 18, 2003